

Commission on Health and Safety and Workers' Compensation

MINUTES OF MEETING

April 17, 2003

**Department of Consumer Affairs Building
Sacramento, California**

In Attendance

Jill A. Dulich, Chair

Commissioners Allen L. Davenport, Tom Rankin, Robert B. Steinberg,

Darrel "Shorty" Thacker, and John C. Wilson

Christine Baker, Executive Officer

Not In Attendance

Commissioners Leonard McLeod and Kristen Schwenkmeyer

Call to Order / Minutes from the February 28, 2003 meeting

Chairperson Dulich called the meeting to order at 10:05 am and asked for a motion on the draft minutes of the February 28, 2003 CHSWC meeting. Commissioner Rankin moved to adopt the minutes, Commissioner Wilson seconded and the motion passed unanimously.

Study Results: Survey of Return to Work at California Private Self-Insured Employers

Robert T. Reville, PhD, Director, RAND Institute of Civil Justice

Mr. Reville presented some findings from the CHSWC survey of return to work practices of private self-insured employers, conducted by RAND. In particular, the study looked at "best practices" that reduce workers' compensation costs and improve long-term outcomes for injured workers. The study found that most firms have formal return to work programs; such programs emphasize early contact of employees which may reduce disability; many of the programs emphasize communication of policies to the treating physicians; and that the most frequent transitional strategy to return the injured worker back to the workplace is to modify work tasks. Another important finding is that worker participation in a formal return to work program increases a worker's wages on average by \$1,500 in the year after injury.

Mr. Reville stated that the draft of this study together with the "Permanent Disability Study at Public-Self Insiders" and the "Analysis of Wage Loss and Return to Work in Other States" will be available by July 2003.

Commissioner Rankin asked what was the size of the employer firms that were in the study and Mr. Reville replied that those firms had 500 or more employees. Mr. Reville did not know the answer to Commissioner Wilson's question regarding what percentage of employees are covered by self-insureds. In response to Chairperson Dulich's question, Mr. Reville commented that a broad range of industries was included in the study.

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CHSWC Permanent Disability Study Project

Robert Reville, Director, RAND Institute for Civil Justice

Frank Neuhauser, UC Berkeley

Mr. Neuhauser made a presentation on the permanent disability rating schedule study of which he is the co-author with Mr. Reville. This evaluation is part of the ongoing CHSWC Permanent Disability project by RAND whose aim is to examine the equity of the current California disability rating system in compensating workers with permanent disabilities and provide empirical findings that can guide a revision that will be consistent with the economic losses experienced by permanently disabled workers.

Mr. Neuhauser commented that the study is looking at data on disability ratings matched to data on the earnings losses of injured workers. Thus far, the study found that the disability rating was a poor predictor of differences in earnings losses across upper extremity injuries. These results for upper extremities were published in the Journal of Occupational Rehabilitation. Mr. Neuhauser further stated that the study is currently analyzing backs and psychiatric injuries and is also planning to examine data on non-economic losses. A draft of this study will be available in the Fall of 2003.

In response to a question from Commissioner Steinberg, Mr. Reville stated that the results of the upper extremity portion of the study were presented to CHSWC before submission to the Journal of Occupational Rehabilitation. Commissioner Steinberg requested that another copy of the Journal article be sent to him.

CHSWC Study of the California Workers' Compensation Insurance Market

Brandon Miller, Hays Companies

Steve Novak, Hays Companies

Kevin Ryan, BWRB

Mr. Miller, Mr. Novak and Mr. Ryan presented a briefing on the progress to date on the "CHSWC Study of the California Workers' Compensation Insurance Market" and identified areas where the Hays companies would be able to make recommendations. Mr. Miller stated that the Hays Companies would not be recommending a "quick fix" solution in the insurance study. He emphasized that the proposed solution would involve a process of change and the cooperation of all parties in the system.

Mr. Miller reported that thus far the Hays Companies had conducted about 40 interviews, reviewed the audit reviews at Division of Workers' Compensation Audit Unit, and completed a literature review and synopsis.

Mr. Ryan then outlined the data analysis process and highlighted the historic data information and areas that the Hays Companies will be reviewing. He commented that these data will be

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updated in the next couple of weeks.

Mr. Ryan noted that the average medical cost per case by injury type in California has not historically been higher than other states. However, overall the average medical cost per case as well as the total cost per case has historically been greater than the national average.

In response to Commissioner Davenport's question on why the average medical cost per case is shown to be higher, Mr. Ryan responded that it was because of the mix of the type of injuries in California. Mr. Ryan responded that the permanent partial disability rates are much higher in California than the US average. Mr. Ryan further noted that there is currently a growing inadequacy of loss reserves has materially impacted evaluation of rates and the Hays Companies is currently analyzing what this impact has been.

Chairperson Dulich asked about the data and Mr. Ryan responded that this is the 2001 compilation put out by the National Council on Compensation Insurance.

Mr. Miller and Mr. Novak then presented to CHSWC some of the areas in the study in which the Hays Companies will be making recommendations. These areas included the unpredictability of the insurance system, issues in bringing capital back to California, changes in availability of coverage and the assigned risk pool, concentration of business inside SCIF and realistic plan for depopulation of SCIF, the development of templates from a regulatory perspective to determine how well the system is functioning, how to better predict financial insolvencies, group self-insurance programs, reinsurance, CIGA penalty issues, and the claim adjustment process.

Mr. Miller commented that the draft recommendations for the study will be available in four to 6 weeks and the final report will be ready in July 2003.

Commissioner Rankin asked if the Hays Companies will take a look at moving towards Washington insurance system model. Mr. Miller replied that the study will examine the single provider model such as Washington.

Follow-up on the Disciplinary Procedures of the Industrial Medical Council

Christine Baker, Executive Officer, CHSWC

Ms. Baker announced that since CHSWC has not yet received a response from the Industrial Medical Council on the Draft CHSWC Report on IMC Disciplinary Procedures, this topic was rescheduled for the next CHSWC meeting.

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Workers' Compensation Medical Payment System

Christine Baker, Executive Officer, CHSWC

Barbara Wynn, Senior Health Policy Analyst, RAND

CHSWC Study of California WC Medical Payment System

Ms. Baker provided an update on the research CHSWC is conducting in response to a request by Senator Richard Alarcón, Chair of the California Senate Committee on Labor and Industrial Relations. Senator Alarcón initially requested in January that CHSWC provide information regarding the workers' compensation medical billing process. At that time, CHSWC staff developed an informational package containing an overview of the workers' compensation medical billing and payment process, a listing of problems noted at each step and the relevant provisions in the Labor Code and the California Code of Regulations (CCR).

Senator Alarcón then requested informed testimony for his January 15, 2003 hearing on workers' compensation medical billing practice at Tenet Healthcare. Testimony was provided by interested parties and, at the suggestion of CHSWC, by the RAND organization including Barbara Wynn.

After the hearing, Senator Alarcón formally requested that CHSWC conduct an in-depth study of problems endemic to and potential cost savings within the workers' compensation medical billing system. CHSWC initiated its independent study working with RAND and the University of California at Berkeley. In addition, CWCI, the WCIRB, and the State Fund have worked closely with CHSWC providing data, information, and feedback.

The CHSWC study has shown that the current system for workers' compensation medical care reimbursements in California is unnecessarily complex, costly, difficult to administer, and, in some cases, either outdated or non-existent. Under California law, certain workers' compensation medical bills are evaluated and paid pursuant to fee schedules established according to specific provisions in the California Labor Code and further detailed in the California Code of Regulations. However, some medical services are not covered under the California workers' compensation fee schedules.

Ms. Baker noted that the report suggested that California may wish to consider a change to the Labor Code which would establish new fee schedules and automatically update the California workers' compensation medical fee schedules whenever the corresponding Medicare fee schedules are changed, without the need for going through the regulatory process. For pharmaceutical reimbursements, workers' compensation payments would be linked to Medi-Cal's fee schedule.

Ms. Baker stated that CHSWC recognizes the efforts of the Industrial Medical Council and Division of Workers' Compensation towards restructuring of the California Official Medical Fee Schedule to a modified version of the Resource Based Relative Value Scale used by Medicare and many other states. She emphasized that there are significant potential administrative

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savings for employers and the State by linking California's workers' compensation medical payment systems to Medicare and Medi-Cal. The savings would result from simplified procedures and increased efficiency.

CHSWC Vote

Commissioner Rankin moved to release the CHSWC Medical Payment Systems report to Senator Alarcón. Commissioner Wilson seconded and the motion passed unanimously.

Policy Issues in Adopting Medicare Fee Schedules

Ms. Baker introduced Barbara Wynn, Senior Health Policy Analyst from RAND who shared the preliminary findings from RAND's study with the Commission.

RAND was asked to identify policy issues and implications of linking the Workers' Compensation medical fee schedules with Medicare fee schedules. Ms. Wynn stated that the report itself is undergoing the RAND peer review process and will be available within a few weeks.

The RAND study drew on the various works such as that of the Lewin RBRVS Study, and the CHSWC report on the Inpatient Hospital Fee Schedule and Outpatient Surgery Study prepared by Dr. Gardner and Dr. Kominski. Ms. Wynn stated that the focus of the analysis in the study were the differences between the current California Workers' Compensation Official Medical Fee Schedule (OMFS) and the Medicare Fee Schedule and the issues that might arise.

Ms. Wynn highlighted some of the topics and issues discussed in the report. These included the makeup of the Medicare fee schedules which are readily available and updated on a regular basis with opportunity for public comment; the similarity and differences between Medicare's rules and the current WC OMFS rules; considerations that need to be taken into account, such as access to care, when adopting the conversion factor; potential transition policies in adopting the Medicare fee schedules.

Ms. Wynn noted that the Medicare fee schedules allow a mechanism to update the workers' compensation fee schedules on a regular basis, to shift the administrative burden to Centers for Medicare and Medicaid Services, and better align the payment with the resources required of providing the service. Ms. Wynn also emphasized the importance of an ongoing system that would monitor access and quality over the course of the implementation of the Medicare fee schedules.

Commissioner Rankin stated that the common argument against Medicare's implementation is that Medicare fee schedules are designed to deal with the elderly population and asked Ms. Wynn to comment. Ms. Wynn replied that the Relative Value Scale for physicians and other practitioners was developed to be appropriate for all patients and was not specific to the elderly population. The conversion factor that is adopted may take into account the workers' compensation population.

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Commissioner Steinberg asked what is the next process with respect to the RAND report and if the Commissioners received a copy of the report. Ms. Wynn clarified that the report is under internal review at RAND. Ms. Baker stated that the RAND restricted draft is different from the Commission report, is not for release at this time, but has been e-mailed to the Commissioners.

Public Comments

Charles Smith

Mr. Smith asked if there any other states that have implemented the Medicare's fee schedules and what are the results. Ms. Wynn responded that there are other states that have adopted the RBRVS and some states have linked to the DRG system. Ms. Baker commented that many states also use Medicare as a basis for their outpatient surgery fee schedules.

Jim Randlett, Medtronic Sofamor Danek

Mr. Randlett commented on the issue of implant reimbursement under Medicare. He stated that the California Division of Workers' Compensation allowed separate reimbursement for implants, because hospitals in some in some instances were paying more for costs of the implants than being reimbursed by the Inpatient Hospital fee schedule. He believed that Medicare does not consider implants as part of their reimbursement system.

George Smith, Medical Advisor in Disability Management Arena

Mr. Smith was interested in the degree to which identified costs of medical care are inflated for by payment for inappropriate medical care such as inappropriate surgery on patients with normal diagnosis and inappropriate extension of care in treatment past the point of medical necessity. Chairperson Dulich commented that the studies presented today refer strictly to payment system and are not addressing utilization issues.

Carl Brakensiek, California Society of Industrial Medicine and Surgery

Mr. Brakensiek commented on the access issue with implementing RBRVS. Mr. Brakensiek stated that thus far there have only been two studies on addressing access and RBRVS and expressed concern that the draft RAND report does not contain a discussion of access with respect to RBRVS implementation.

Ms. Wynn responded that the issue of the appropriate level at which the multiplier is set is in part the answer to the access issue. Also, the Lewin report on the RBRVS would indicate that the current levels are at about 115% of Medicare conversion factor. Chairperson Dulich added that Ms. Wynn also commented on the need for ongoing monitoring of access in her presentation to the Commission.

Mr. Brakensiek noted that the Lewin Study looked only at the Evaluation and Management services. Ms. Wynn stated that actually the Lewin part consisted of several pieces -- they

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examined the relative value units for E & M services, but they also looked broadly at implementing the RBRVS as it currently stands.

Chairperson Dulich suggested that a motion be taken to release the RAND report after it has gone through a completed review process at RAND.

CHSWC Vote

Commissioner Rankin moved to release the RAND report after it has gone through a completed review and approval process at RAND. Commissioner Thacker seconded and the motion passed unanimously.

Upcoming CHSWC Activities

Christine Baker, CHSWC Executive Officer

CHSWC Meetings

Commissioner Steinberg asked if there is a schedule of future meetings available. Ms. Baker stated that the next meeting will be the "California Colloquium on Workers' Compensation Medical Benefit Delivery and Return to Work" at UCLA on May 1st and 2nd. The following CHSWC meeting is scheduled for August 7, 2003 in San Francisco.

California Research Colloquium on Workers' Compensation Medical Benefit Delivery and Return to Work

The California Research Colloquium on Workers' Compensation Medical Benefit Delivery and Return to Work will be held on Thursday and Friday, May 1 and 2, 2003 at the UCLA Faculty Center. The Colloquium will be hosted by CHSWC, the Department of Industrial Relations and the Division of Workers' Compensation. Ms. Baker noted that there has been strong interest and response from the health, safety and workers' compensation community and thus far 150 persons have registered for the Colloquium.

Ms. Baker announced that CHSWC, DIR and DWC would like to thank the community and the following organizations for their contributions and support:

Colloquium Joint Sponsors

- The Center for Occupational and Environmental Health of the Continuing Education Program at the University of California, Berkeley, and
- The Southern California Education and Research Center of the Continuing Education Program at the University of California, Los Angeles

Colloquium Co-Sponsors

- The California Correctional Peace Officers Association,

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- The California Wellness Foundation,
- The Institute for Labor and Employment at the University of California, Berkeley,
- The International Workers' Compensation Foundation, Incorporated,
- The School of Public Health of the University of California at Los Angeles,
- the Workers' Compensation Health Initiative of the Robert Wood Johnson Foundation, and
- the California Health Care Foundation for their co-sponsorship of the Colloquium.

Ms. Baker stated that the Commission, DIR, DWC, and the Colloquium Joint Sponsors and Co-Sponsors all look forward to a successful Colloquium and we welcome the community's interest and participation.

Child Labor Photo Exhibit by Lewis Wickes Hine, Opening May 7 at San Francisco City Hall

Ms. Baker invited the everyone to the Lewin Wickes Hines photography exhibition at the San Francisco City Hall. This exhibit of photos of child labor will be held from May 7th to July 6th. CHSWC has obtained a grant and is working very closely with DIR as a co-sponsor. Ms. Baker also noted that the State Compensation Insurance Fund (SCIF) and several other sponsors are supporting this effort.

Other Business/Proposals/Public Questions and Comments

Study of the DWC Judicial System

Ms. Baker noted that the report on the CHSWC study of the DWC Judicial System by RAND has undergone peer review and is now in the final version.

CHSWC Vote

Commissioner Rankin moved to release the Judicial Study report to the Legislature with a cover letter from CHSWC. Commissioner Wilson seconded and the motion passed unanimously.

Staff Appreciation

Ms. Baker acknowledged and thanked the CHSWC staff - Janice Yapdiangco, Kirsten Strömberg, Irina Nemirovsky, Brooke Nagle, Carol Kemski, Oliva Vela, and Chellah Yanga for their dedicated and tireless work on CHSWC projects.

Chairperson Dulich expressed her thanks to the CHSWC staff as well.

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Public Comments

Ross Walker, Nurse Practitioner with a Small Rehabilitation Clinic in Roseville

Mr. Walker commented on the adversarial relationship between the injured workers and the claims adjusters from the treating provider's point of view. He also remarked that many patients have their medical care delayed. Commissioner Davenport asked Mr. Walker how long he has been in practice and Mr. Walker responded that he has been with the clinic for about four years.

Adjournment

Commissioner Rankin moved to adjourn the meeting, Commissioner Thacker seconded and the meeting was adjourned at 12:15 p.m.

Approved:

Respectfully submitted,

Jill Dulich, Chair

Date

Christine Baker, Executive Officer Date